

Message

From: Foss, Steve (AGR) [SFoss@agr.wa.gov]
Sent: 9/25/2018 9:01:15 PM
To: Hollis, Linda [Hollis.Linda@epa.gov]
CC: Maignan, Tawanda [Maignan.Tawanda@epa.gov]; Davis, Kelle (AGR) [KMDavis@agr.wa.gov]
Subject: Background Information | State Authority SLN's |
Attachments: Ref 3_46FedReg Wednesday January 7 1981.pdf; 44 FedReg Tuesday August 7 1979 Proposed Regulations SLNs.pdf; PUBLIC LAW 95-396_SEPT 30 1978.pdf

Hi Linda,

I understand from Kelle Davis that our counsel Christopher P. Wright, Asst. Attorney General (360.753.6213; ChristopherW1@ATG.WA.GOV) is not available tomorrow (Wednesday) morning. He has been given the contact information for your counsel.

In the meantime, please find below some additional background information for EPA's consideration.

As you know, the FEDERAL PESTICIDE ACT OF 1978 was new legislation, which amended §24(c) of FIFRA to provide the States with **greater flexibility and independence** in issuing registrations for "special local needs."

In 1979, it was suggested that section 24(c)(1) was intended to limit State authority to registration of products formulated only from federally registered technical grade materials (see Federal Register Vol. 44, No. 153, August 7, 1979 page 46415 under the subheading State Registration Authority).

In 1981, four commenters responded to the suggestion above (see FR Vol. 46, No. 4, page 2008-2009). EPA concluded that sec. 24(c)(1) was intended to limit State registration of new end-use products to those who active ingredients are present because of the use of federally-registered products. Accordingly, a new § 162.152(b)(2)(ii) was added to clarify this limitation.

EPA explained on the page 2009 that Section 162.152(b)(2)(ii) of the regulations will be revised to clarify any limitations on State authority when, and if, EPA modifies its policy on reformulation of end-use products. It does not appear that Section 162.152(b)(2)(ii) has been revised since 1981 to include the suggested limitation proposed in 1979.

Currently, a state may register a section 24(c) registration for a new pesticide product, which does not have a federal registration only in accordance with 40 CFR 162.152(b)(2) – Issue #15.

40 CFR 162.152 - State registration authority

§ 162.152 (b)(2)(ii) A State may register a **new product** only if each of the active ingredients in the **new product** is present because of the use of one or more **federally registered products** and if each of the inert ingredients in the **new product** is contained in a **federally registered product**.

As used in § 162.152 (b)(2)(ii) "**new product**" is taken to mean "a pesticide product which is not a currently federally registered pesticide product". This would include the 24(c) product described by WSDA for use in the controlled atmosphere site / packing house.

As used in § 162.152 (b)(2)(ii) "**federally registered product**" is taken to mean "a pesticide product currently registered under section 3 of the Act, after having been initially registered under the Federal Insecticide, Fungicide, and Rodenticide Act of 1947 by the Secretary of Agriculture or under FIFRA by the Administrator of EPA."

EPA and WSDA has received various documents indicating that the active ingredient in Hazel CA is similar in its composition and use pattern to other federally registered pesticides. The active ingredient in the following products contain the same active ingredient, which is **1-Methylcyclopropene**: Hazel CA (WA-180007), Ethlybloc (EPA Reg. No. 71297-1), Fysium (EPA Reg. No. 43813-57), SmartFresh ProTabs (EPA Reg. No. 71297-10), SmartFresh Smartabs (EPA Reg. No. 71297-3) , and SmartFresh Technology (EPA Reg. No. 71297-2).

COMMENT: It would appear that as long as the active ingredient meets the criterion of being an active ingredient in a pesticide product currently registered under section 3 of the Act, and as long as the inert ingredients are contained in a pesticide product currently registered under section 3 of the Act, the State [WSDA] has not exceeded its state authority under the act. In addition, we

note that since there is little specificity with which ***"federally registered product"*** is referred to in this section, it would appear that it is not necessary that the ***"federally registered product"*** containing the active ingredient be the same ***"federally registered product"*** containing the inert ingredients. We further note that this section fails to address provenance of the ***"federally registered product"***. Thus, the ***"federally registered product"*** that is the source of the active ingredient could well be from a different registrant than the ***"federally registered product"*** that is the source of the inert ingredients.

In October 1991, EPA formed an internal work group, the Center for Excellence for Special Local Needs [24(c)] Registrations, to identify problems, propose solutions and to update policies and procedures related to 24(c) registrations. The work group focused on the procedures and issues which had proven to be problematic in administering the §24(c) program. The goals of the work group were to clarify the Agency's position on these issues, to streamline the process and to provide guidance within EPA as well as to the state lead agencies.

In July 1992, EPA held a workshop with states and EPA regional representatives to collect and address a list of 24(c) issues of concern. EPA committed itself to resolving as many of these issues as possible, to improving the 24(c) registration process and to providing clear guidance to the states and regions. The 24c guidance document was intended to empower the states to operate as independently as possible to reduce the resources EPA uses to review 24(c) applications and to assure the public that no unreasonable adverse effects will occur from 24(c) registrations. This guidance document was not intended to replace the §24(c) regulations at 40 CFR part 162, rather to clarify the regulations and to provide additional guidance.

The current 24c guidance document does not appear to specifically limit State authority in a manner as suggested by some individuals.

From: Hollis, Linda [mailto:Hollis.Linda@epa.gov]
Sent: Monday, September 24, 2018 10:17 AM
To: Foss, Steve (AGR) <SFoss@agr.wa.gov>
Subject: RE: 71297 - update respirator cartridges on labels

Hi Steve-

I have spoken to our counsel he not be available any time after 2pm on Wednesday. So we can the meeting anywhere between 9am and 11am Pacific Time. How do you advise?